

JOHN J. VIKARCIK
GEORGE W. VRABLE

IBLA 81-530

Decided October 21, 1981

Appeal from decision of the California State Office, Bureau of Land Management, rejecting recordation of certain mining claims. CA MC 54975 through CA MC 54978.

Affirmed as modified.

1. Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

2. Mining Claims: Recordation--Words and Phrases

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper Bureau of Land Management office, of such instrument or recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence except microfilm, of an amended instrument which may change or alter the description of the claim. A quitclaim deed is not an acceptable substitute in the absence of a showing that the certificates of location were unavailable.

APPEARANCES: Robert C. Coates, Esq., for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

John J. Vikarcik and George W. Vrable have appealed from the March 10, 1981, decision of the California State Office, Bureau of Land Management (BLM), rejecting recordation of certain mining claims held by appellants including the Bedrock (CA MC 54975), Warlock (CA MC 54976), Neptune (CA MC 54977), and Shamrock (CA MC 54978) mining claims. 1/ Appellants filed maps, quitclaim deeds, and proofs of labor for these claims with BLM on October 20, 1979. No copies of the original location notices, however, were filed. On January 30, 1981, the California State Office notified appellants that the claims could not be recorded in the absence of original location notices, and allowed appellants 30 days in which to submit the copies. 2/ Appellants neither sent copies nor explained why copies were not available. On March 10, 1981, BLM issued its decision rejecting the filings.

[1] Section 314(b) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. William E. Talbott, 52 IBLA 12 (1981).

[2] "Copy of the official record of the notice of location" is defined by 43 CFR 3833.0-5(i) to include:

[A] legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

The purpose of the recordation requirements of FLPMA is to give notice to BLM of the existence of mining claims on Federal lands so that this information may be considered in the management of those lands. The

1/ This appeal concerns only the four claims named above, although the decision below also affected a number of other claims.

2/ See n.3, infra.

date of location is important for establishing the date from which a claimant's rights to a particular claim arise. William E. Talbott, supra.

The quitclaim deeds submitted by appellants do not constitute "other evidence" of the certificate of location under the above regulation as the deed in no way refers to the location of the claim or its recordation in the county recorder's office. Cleo May Fresh, 50 IBLA 363 (1980). The provision in the regulation concerning the submission of "other evidence" applies only when the notice of location is no longer obtainable or when a claimant purports to hold a claim under 30 U.S.C. § 38 (1976). Id. 3/ Although appellants were given 30 days to submit copies of the original location notices, they did not submit them and, further, gave no explanation as to why they did not. In these circumstances, we cannot assume that the notices of location are no longer obtainable or that appellants purport to hold claims under 30 U.S.C. § 38 (1976) (entitled "Evidence of possession and work to establish right to patent"). Accordingly, appellants' submission of maps and quitclaim deeds was not sufficient to effect the recordation of their claims. See Marvin E. Brown, supra at n.3.

Appellants do not allege compliance with the statutory and regulatory provisions. Instead, they argue that these requirements are unconstitutional. They assert that unpatented mining claims are valuable property rights requiring constitutional due process protection; that the Government may not alter prior vested rights by subsequent legislation; that there is no public welfare interest nor an emergency authorizing taking without just compensation; that the statutory irrebuttable presumption of abandonment is arbitrary and capricious; and that there has been no notice or opportunity to be heard before forfeiture. In Lynn Keith, 53 IBLA 192, 197-98, 88 I.D. 369, 372 (1981), we responded to similar objections to the constitutionality of the statute as follows:

 3/ While quitclaim deeds may be acceptable if a claimant demonstrates that the certificates of location are not available, the State Office's letter of Jan. 30, 1981, purported to extend the time for filing the documents which the statute required to be filed by Oct. 22, 1979. In Lynn Keith, infra, we noted that Congress did not vest the Secretary of the Interior with the authority to waive or excuse noncompliance with the statute. Although Organic Act Directive (OAD) 80-19 (Feb. 25, 1980) refers to the submission of quitclaim deeds as a substitute for certificates of location, we do not read this as approving acceptability of quitclaim deeds in all situations. See D. Estremado, 55 IBLA 49 n.1 (1981). The OAD 80-19 refers to OAD 79-7 (Nov. 24, 1978), which indicated that quitclaim deeds may be accepted if the mining claimant demonstrates that the certificates of location were unavailable. See Marvin E. Brown, 52 IBLA 44 (1981).

Appellant's challenge of the statute and regulations cannot be sustained here. Essentially, the regulations merely mirror the statute and, to the extent that they have been considered by the courts, they have been upheld. See Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979) (appeal pending); Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, [Civ. No. 78-46 M. (D. Mont. June 19, 1979)]. In any event, it has frequently been held that an appeals board of this Department has no authority to declare a duly promulgated regulation invalid. Exxon Co., U.S.A., 45 IBLA 313 (1980); cf. Garland Coal and Mining Co., 52 IBLA 60 (1981). Nor may such a regulation be waived by the Department. Marvin E. Brown, 52 IBLA 44 (1981), and cases therein cited. With reference to the statute, this Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an act of Congress is constitutional. Alex Pinkham, 52 IBLA 149 (1981), and cases therein cited. Jurisdiction of such an issue is reserved exclusively to the judicial branch.

In answer to appellants' objection that there has been no opportunity to be heard, we note that no hearing is required in the absence of a disputed issue of material fact. See United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432, 453 (9th Cir. 1971). No such issue arises as appellants do not dispute their failure to file the documents necessary to prevent their claims from being deemed abandoned under FLPMA.

We note that appellants may relocate these claims and file notice of this as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mining location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1 the decision appealed from is affirmed.

Anne Poindexter Lewis

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

